

### **REMARKS/ARGUMENTS**

This amendment is submitted in response to the Office Action dated June 4, 2007. Claims 1, 11, 21-23 have been amended. Claims 1-23 remain pending in this application. Reconsideration and allowance are respectfully requested in view of the remarks made below.

#### ***1. The Prior Art Rejections***

Claims 1-23 were rejected in the Office Action under 35 U.S.C. §102(b) as being anticipated by Ochs (US 4,813,561) or German et al. (US 6,276,543).

##### **A. The §102(b) Rejection Based on Ochs**

The Office Action takes the position that original claims 1-23 are anticipated in view of U.S. Patent 4,813,561 to Ochs ("Ochs"). Applicant respectfully but strenuously traverses this rejection, for the reasons set forth below.

Ochs concerns a closure with a disk shaped metal cover and a sealing portion at its outer edge. The closure comprises a tamper evident band, which, for example, is shown in Figures 3 and 4 of the document. The tamper evident band comprises a J-hook retention member, which is molded integrally with the skirt in a downward position and subsequently bent upwardly. The band is molded with spaced ratchets with one or more ratchet teeth to cooperate with spaced ratchets on the container.

MPEP §2131 sets forth the applicable legal standard, as articulated by the USPTO, for a rejection based on anticipation pursuant under 35 U.S.C. §102(b):

#### **TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.



Applicant respectfully submits that Ochs fails to disclose a plurality of pleated retaining elements. According to "Merriam Webster", a pleat is a fold made by doubling material over on itself or something resembling such a fold.

By contrast, Ochs merely discloses sawtooth like structures, i.e. spaced ratchets, that are only located on the inside of the retaining element (See figs. 3-4, part 21). The retaining elements shown in Ochs do not disclose or suggest in any way a folded material so as to form a double sided pleated retaining element, as required by the independent claims. Rather, the ratchet elements disclosed in Ochs are solid protrusions arranged on the tamper evident band. In comparison to the double-sided pleated retaining element of the present invention, Ochs' spaced ratchets disclose completely different inner and the outer surfaces. The insides of Ochs' spaced ratchets are saw-tooth like protrusions, whereas the outside is integral with the tamper evident band, forming a uniform and continuous smooth surface (See fig. 4). Because Ochs lacks these double sided pleated retaining elements, it is not as effective to resist rotation and to prevent upward movement of the tamper evident band.

Furthermore, the Office Action has improperly interpreted part 21 of the J-hook member as meeting the pleated retaining element limitation of the claims. Applicant notes that it would be improper to interpret the edge of the J-hook member as a "pleat" since Applicant's claims also set forth a J-hook retention member. It is well established that the same structure in a reference can not properly be interpreted to satisfy two different claim elements.

Ochs also fails to disclose at least one pleat folded perpendicular to the lower rim of the sidewall. The alleged pleated retaining element, i.e. part 21, is notably "folded" in an orientation that is parallel to the lower rim. The alleged fold, in fact, occurs along the edge of the lower rim.

With regard to independent claims 21-22, as amended, it is especially noted that Ochs also fails to show an upper portion of the pleated retaining elements having at least one inwardly

directed pleat fold and/or at least one outwardly directed pleat fold on its inside and its outside. As discussed above, Ochs merely discloses spaced ratchets having inwardly directed saw-tooth like protrusions, whereas the outside is integral with the tamper evident band, forming a uniform and continuous smooth surface. Ochs therefore fails to disclose an upper portion having an inwardly and/or outwardly directed pleat fold on an outside surface of a pleated retaining element.

Therefore, Ochs does not disclose or suggest "each and every element" of the claims as would legally be required to support a proper §102(b) anticipation rejection. The rejection is therefore improper and should be withdrawn.

**B. The §102(b) Rejection Based on German et al.**

The Office Action rejected original claims 1-23 as being anticipated by U.S. Patent 6,276,543 to German et al. ("German"). Applicant respectfully but strenuously traverses this rejection, for the reasons set forth below.

German discloses a composite closure with an insert cover disk. A tamper evident band is formed as a downward extension of the closure skirt. Along its lower edge the band has a band retainer that comprises a plurality of hinged angular spaced tabs or spring fingers (Figures 4 and 5A, column 6 lines 30+), which can be inverted from a down position to an up "use" position. Each finger presents one or more ratchets. The "fingers" disclosed in the reference are so stiff that if they were not separated by gaps they could not be inverted (column 6, lines 43-44), which would not hold for pleated elements.

Pursuant to MPEP §2131, German fails to disclose every element of the claims. Namely, German fails to disclose a J-hook retention member that includes a plurality of pleated retaining elements with a pleated shape on their inside and their outside, wherein at least one pleat is folded perpendicular to the lower rim of said sidewall portion, as all of Applicant's independent claims positively set forth. As discussed above, these double sided pleated retaining elements of

the present invention function to provide additional traction flexible resistance to prevent rotation and the upward movement of the tamper evident band.

By contrast, German merely discloses ratchet elements that are solid protrusions arranged on the tamper evident band. The solid inwardly projecting ratchet fingers shown in German do not disclose or suggest in any way a folded material so as to form a double sided pleated retaining element, as required by the independent claims. German's ratchet fingers have completely different inner and the outer surfaces. The insides of German's ratchet fingers are saw-tooth like protrusions, whereas the outside is integral with the tamper evident band forming a uniform and continuous smooth surface (See fig. 5A). Because German lacks these double sided pleated retaining elements, it is not as effective to resist rotation and to prevent upward movement of the tamper evident band.

Additionally, contrary to the interpretation provided in the Office Action, it would be improper to interpret the edge of the J-hook member as a "pleat" since, Applicant's claims also set forth a J-hook retention member. It is well established that the same structure in a reference can not properly be interpreted to satisfy two different claim elements.

Because, as established above, German fails to disclose the pleated retaining elements required by the claims, German also fails to disclose at least one pleat folded perpendicular to the lower rim of the sidewall.

With regard to Applicant's independent claims 21-22, it is especially noted that German also fails to show an upper portion of the pleated retaining elements having at least one inwardly directed pleat fold and/or outwardly directed pleat fold on its inside and its outside. As discussed above, German merely discloses ratchet fingers having inwardly directed saw-tooth like protrusions, whereas the outside is integral with the tamper indicating band forming a uniform and continuous smooth surface. German therefore fails to disclose an upper portion having an inwardly and/or outwardly directed pleat fold on an outside surface of a pleated retaining element.

Accordingly, all of the pending claims are novel over the prior art of record. In addition, there is no suggestion or incentive present that would have led a person skilled in the art to modify any of the cited references in order to achieve what Applicant is claiming. Thus the pending claims are also not obvious over the prior art and should be allowable. A Notice of Allowance is respectfully solicited.

## **2. Conclusion**

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner Ngo feels that a telephone interview would expedite prosecution of this patent application, she is respectfully invited to telephone the undersigned at 215-599-0600. Contact with the undersigned via electronic mail at [jknoble@patentwise.com](mailto:jknoble@patentwise.com) is hereby authorized<sup>1</sup> per MPEP § 502.03.

Respectfully submitted,

/John L. Knoble/

John L. Knoble  
Registration No. 32,387

Date: September 4, 2007

KNOBLE YOSHIDA & DUNLEAVY, LLC  
Eight Penn Center- Suite 1350  
1628 John F. Kennedy Boulevard  
Philadelphia, PA 19103  
(215) 599-0600 Main  
(215) 599-0601 Fax  
[jknoble@patentwise.com](mailto:jknoble@patentwise.com)

---

<sup>1</sup> Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.